

Hon. Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION**

JOSEPH ANDREW HYLKEMA, a single
man,
Plaintiff
v.

No. 09-CV-1325-RSM

MOTION TO STRIKE AFFIRMATIVE
DEFENSES

GC SERVICES LIMITED PARTNERSHIP
of Delaware; TOM DANCE and JANE
DOE DANCE, BELINDA DOE and JOHN
DOE, MIKE DOE, TANISHA DOE,
DEVONNA DOE, KATIE FREEBERG,
ANDRE DOE, SHARON DOE, KIRK
BROWN, SARAH DOE, and JANE DOE
ALTMAN; individually and the
marital communities thereof,
Defendants

MOTION CALENDAR: OCT. 23, 2009

1. RELIEF REQUESTED

1.1. Plaintiff requests the Court, pursuant to FRCP 12(f), enter
an order striking out Defendant's affirmative defenses with
leave to amend on the grounds that Defendant has failed to
allege any factual grounds whatsoever for any of its purported
defenses.

2. STATEMENT OF FACTS

2.1. In its Answer to Plaintiff's Complaint, Defendant GC Services raised certain affirmative defenses, to-wit: failure to state claims, lack of personal jurisdiction over the individual defendants, lack of subject matter jurisdiction, limitation of action, preclusion by federal law and bona fide error. *Def. Answer*, §§ 2.1 – 2.6.

3. STATEMENT OF THE ISSUES

3.1. Whether Defendant's affirmative defenses comply with FRCP 8, especially in light of *Bell Atlantic v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007).

4. EVIDENCE RELIED UPON

4.1. As mandated by FRCP 12, Plaintiff relies solely upon the pleadings on file herein.

5. ARGUMENT

5.1. "The general rules of pleading that are applicable to the statement of a claim also govern the statement of affirmative defenses under Federal Rule 8(c)." 5 Wright & Miller, *Federal Practice and Procedure*: Civil 3d § 1274.

5.2. "Affirmative defenses are pleadings and, therefore, are subject to all pleading requirements of the Federal Rules of Civil Procedure." *Heller Financial, Inc. v. Midwhey Powder Company*, 883 F.2d 1286, 1294 (7th Cir. 1989).

5.3. "Thus, defenses must set forth a 'short and plain

1 statement', [FRCP] 8(a), of the defense." *Id.* "'Bare bones
2 conclusory allegations' without a short and plain statement
3 setting forth each element of the claimed defense are
4 insufficient as a matter of law." *Id.*, at 1294-5.

5 5.4. Under *Twombly*, "a short and plain statement of the claim
6 showing that the pleader is entitled to relief," FRCP 8(a)(2),
7 must include "more than labels and conclusions, and a formulaic
8 recitation of the elements of a cause of action will not do."
9 *Twombly*, 127 S.Ct. at 1959. Every pleading, including
10 affirmative defenses, *Heller, supra*, must contain enough factual
11 allegations to "raise a right to relief above the speculative
12 level." *Id.*

13 5.5. The old standard set forth in *Conley v. Gibson*, 355 U.S.
14 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957), under which a
15 pleader could get by only unless he could "prove no set of facts
16 in support of claim that would entitle him to relief" has
17 "earned its retirement" and is "best forgotten." *Twombly*, 127
18 S.Ct. at 1968.

19 5.6. Here, Defendant has made no pretense of even trying to
20 comply with Rule 8. Its answer is devoid of any facts to
21 support any of its purported defenses. It leaves one to guess,
22 for example, what procedures Defendant allegedly maintained to
23 prevent violations of the FDCPA, how a case based on phone calls
24 made as far back as February 2009 could be time-barred under the

1 FDCPA's one-year statute of limitations or how Plaintiff's
2 claims could be precluded by federal law when the FDCPA, 15
3 U.S.C. § 1692n, specifically does not preempt statutes such as
4 Washington's which provide greater protection than the FDCPA.

5 **6. CONCLUSION**

6 6.1. The kind of boilerplate pleading Defendant has submitted
7 would not pass muster under the old *Conley* standard. It
8 certainly does not pass muster under *Twombly*. At a minimum, the
9 Court should therefore strike all of Defendant's affirmative
10 defenses and give Defendant leave to re-plead with adequate
11 factual support, if any it has, within a reasonable time.

12 DATED: October 1, 2009

13 S/Joseph A. Hylkema
14 JOSEPH ANDREW HYLKEMA
15 WSBA: N/A
16 Plaintiff pro se
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CERTIFICATE OF SERVICE

I hereby certify that, on October 1, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Jeffrey I. Hasson
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Attorney for Defendant GC Services LP

And I certify that I have deposited into the mails of the United States, first class postage prepaid, a true and correct copy of the foregoing directed to the following non CM/ECF participants: N/A.

DATED: October 1, 2009

S/Joseph A. Hylkema
JOSEPH ANDREW HYLKEMA
WSBA: N/A
Plaintiff pro se